

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**NOVEMBER 18, 1999**

**IN RE:**

**JOINT APPLICATION FOR APPROVAL OF A  
MERGER OF TELECOM ONE, INC. WITH  
ECLIPSE TELECOMMUNICATIONS, INC.**

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**DOCKET NO.  
99-00456**

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**ORDER APPROVING MERGER**

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This matter came before the Tennessee Regulatory Authority ("Authority") on the Joint Application ("Application") of Eclipse Telecommunications, Inc. ("Eclipse") and Telecom One, Inc. ("Telecom One") (referred to jointly as the "Parties") pursuant to Tenn. Code Ann. § 65-4-112. The Application filed by the Parties seeks the approval of a transaction whereby Telecom One will be merged with Eclipse pursuant to an Agreement and Plan of Merger ("Agreement") entered into between Telecom One and Eclipse on May 25, 1999, and filed with the Authority on June 23, 1999.

The Directors of the Authority considered this matter at a regularly scheduled Authority Conference held on July 13, 1999. Based upon careful consideration of the Application, the exhibits, and the entire record of this matter, the Authority has determined the following:

1. Eclipse is a Delaware corporation headquartered at 1112 Capital of Texas Highway South, Austin, Texas 78746-6426. Eclipse is a wholly-owned subsidiary of IXC Communications Services, Inc. ("IXC-CSI"). IXC-CSI, in turn, is a wholly-owned subsidiary

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of IXC Communications, Inc. ("IXC"). Eclipse currently provides resold interexchange telecommunications services in Tennessee pursuant to authority granted by the Tennessee Public Service Commission ("TPSC") in Docket No. 95-02659 on August 2, 1995.

2. Telecom One is a Delaware corporation headquartered at 1100 Jorie Boulevard, Suite 215, Oak Brook, Illinois 60521. Telecom One is a wholly-owned subsidiary of IXC-CSI. Telecom One is a provider of resold interexchange telecommunications services in Tennessee pursuant to authority granted by the TPSC in Docket No. 95-03334 on November 10, 1995.

3. According to the Application, on May 25, 1999, Eclipse and Telecom One executed an Agreement, pursuant to which Telecom One will be merged with and into Eclipse after requisite regulatory approvals have been obtained. Following the merger, Telecom One will surrender its certification in Tennessee and Eclipse will assume Telecom One's operations and will provide service to Telecom One's customers under a tariff that duplicates the service offerings, rates, terms and conditions found in the current Telecom One tariff. Moreover, the affected customers will be notified of the merger.

4. In conjunction with the Agreement, the Certificate of Public Convenience and Necessity held by Telecom One will be withdrawn and cancelled. Tenn. Code Ann. § 65-4-112(a) requires approval from the Authority before a public utility may merge or consolidate its property with that of another utility. Accordingly, pursuant to Tenn. Code Ann. § 65-4-112(a), the Parties have sought the Authority's approval of the merger.

#### **I. CRITERIA FOR APPROVING MERGER**

A merger or consolidation of property between regulated public utilities is not valid until approved by the Authority under the provisions of Tenn. Code Ann. § 65-4-112. In

addition, under Tenn. Code Ann. § 65-4-101, any entity that owns, operates, manages or controls utility systems, plant or equipment under certification by this Authority or its predecessor, the Tennessee Public Service Commission, to provide utility service in the state of Tennessee, is a public utility. Since this merger involves two entities holding certificates in Tennessee, Authority approval is required under the provisions of Tenn. Code Ann. § 65-4-112(a). This Section provides for the following:

(a) **No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority,** even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state. (Emphasis supplied).

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After consideration of the entire record in this matter, including the Application, the Directors find and conclude as follows:


1. That Eclipse and Telecom One have been engaged in the business of providing telecommunications services in Tennessee;
2. That the Authority has jurisdiction over the subject matter of the Application pursuant to Tenn. Code Ann. §§ 65-4-101 and 65-4-112;
3. That the proposed transaction between Eclipse and Telecom One will be accomplished by the Agreement executed between the Parties on May 25, 1999, through which Telecom One will be merged with Eclipse;
4. That after the proposed merger of Telecom One with and into Eclipse, Telecom One will cease to operate as reseller of intrastate interexchange telecommunications services in Tennessee; and

5. That the Application also states that the merger will enhance the operational efficiency and financial viability of the combined companies, and that these enhancements will accrue to the benefit of the Parties' customers. Based on the Parties' representations, the Authority finds that the proposed merger is proper for the purposes of Tenn. Code Ann. § 65-4-112 and should be approved.

**IT IS THEREFORE ORDERED THAT:**

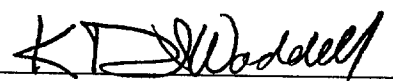
1. The Joint Application of Eclipse Telecommunications, Inc. and Telecom One, Inc. for approval of an Agreement and Plan of Merger is granted;
2. The Certificate of Public Convenience and Necessity granted to Telecom One, Inc. by the Tennessee Public Service Commission in Docket No. 95-03334 is withdrawn and cancelled; and
3. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.

  
Melvin J. Malone, Chairman

  
H. Lynn Greer, Jr., Director

  
Sara Kyle, Director

ATTEST:

  
K. David Waddell, Executive Secretary